IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

..

:: JUDGMENT ::

State of Rajasthan Vs. Lal Singh & Anr.

S.B. CIVIL MISC. APPEAL NO.163/2001.

Against the award dated 17.10.2000 made by the Motor Accidents Claims Tribunal, Pratapgarh in Claim Case No. 50/1993 (Lal Singh Vs. State & Ors.)

Date of Judgment :: 17.11.2006.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. B.L. Bhati, Addl. Government Advocate, for the appellant.
Mr. Anuj Sahlot for
Mr. Mridul Jain, for the respondent No.1.

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BY THE COURT;

This appeal preferred by the owner of the vehicle involved in the accident against the award dated 17.10.2000 made by the Motor Accidents Claims Tribunal, Pratapgarh in Claim Case No.50/1993 was admitted on 06.02.2001; however, it was submitted by the learned counsel for the parties on 07.05.2002 that the appeal involves a short question that could conveniently be decided at the stage of orders on the stay

application. Accordingly, record was called for and the matter was ordered to be listed for final disposal at this stage. Learned counsel for the parties have, therefore, been heard finally.

The only short question raised in this appeal by the learned Additional Government Advocate appearing for the appellant is about justification of the amount of compensation awarded by the Tribunal at Rs.2,00,000/- for the loss suffered by the claimant because of the injuries sustained in a vehicular accident.

A brief reference to the background facts would suffice. The claimant Lal Singh, working as a Constable with Pratapgarh Police met with an accident in the night intervening 3rd and 4th July 1992 while on patrolling duty with Constable Lal Shanker at Sadar Bazar, Pratapgarh when he was hit by an oncoming jeep bearing registration No. RJ 09 C 0370 belonging to the appellant and driven by the respondent No.2. The claimant sustained certain injuries including fracture of fibula and pubic bones. In his claim application, after narrating the incident, for quantification of compensation the claimant alleged that he remained in plaster from 04.07.1992 to 21.10.1992 but internal septic having developed in the leg, he remained hospitalised at Wadilal General Hospital, Ahmedabad and the operation being not successful, took further treatment at Jaliyan Orthopaedic Hospital, Ahmedabad where he was

operated on 24.10.1992 and ring frame was fixed on his leg and he continuously remained under treatment till 31.08.1993; that he joined duties at Kherwara on 01.09.1993 but was still required to depend on crutches and has suffered permanent disablement where the movements of his knee and heal are restricted and the leg has developed a bend. The claimant claimed Rs.1,00,000/- on treatment expenditure and Rs.1,800/- towards lodging charges at Ahmedabad and Rs.9,000/- towards special diets. The claimant also alleged that because of the accident he has lost the chances of promotion in his services; that upon promotion he would have got salary of Rs.4,000/- per month and would have received pension and gratuity in that proportion and claimed Rs.4,00,000/- towards loss on that count. The claimant further claimed Rs.1,00,000/- towards loss of amenities of life and disablement.

The non-applicant No.5, driver of the offending vehicle in his reply stated general denial of the claim averments. The non-applicants Nos.1 to 4 in their separate reply while again stating general denial of the claim averments admitted the fact that the claimant was working as a Constable with Pratapgarh Police but submitted that the accident occurred for the negligence of the claimant himself; that his injuries were not so grievous as alleged; that the claim for compensation was totally baseless; and that he had recovered treatment

expenditure from the State Government and was not entitled to recover the same over again.

On the pleadings of the parties, following issues were framed by the Tribunal for determination of the questions involved in the case:-

> "1. क्या दिनांक 3 व 4 जुलाई 1992 की मध्य रात्रि को प्रार्थी की दुर्घटना विप्रार्थी सं.5 द्वारा चलाई जा रही जीप सं० आरजे09/सी-0370 से वादपत्र के पेरा नं० 6 में वर्णित कारणों से हुई ?
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> 2. क्या प्रार्थी ने इलाज का खर्चा राज्य सरकार से प्राप्त किया है इस कारण प्रार्थी अब पैरा नं० 11 व 12 में वर्णित राशियां प्राप्त करने का अधिकारी नहीं है ?
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> 3. क्या प्रार्थी वादपत्र के पेरा नं० 11 में वर्णित आधारों पर रू० 610,800/- प्राप्त करने का अधिकारी है ?
>
> 4. अनुतोष क्या होगा ? "

In oral evidence, the claimant examined himself as PW-1, his father Bheru Singh as PW-2 and Lal Shanker, an eye-witness to the accident as PW-3 and produced documentary evidence on record. No evidence was led by the non-applicants at all.

After hearing the parties, the learned Judge of the Tribunal has found in issue No.1 with reference to the evidence on record that the accident occurred for rash and negligent driving of the jeep by the non-applicant No.5. In issue No.2, the

learned Judge, without reference to any particular piece of evidence, has observed that on the basis of evidence of both the parties, it could be concluded that the claimant has received Rs.12,000/- from the Police Welfare Fund and such amount could be deducted in the final award. Taking up quantification of compensation in issue No.3, the learned Judge has observed that the claimant has produced bills of treatment expenditure Ex.12 to 19 for about Rs.50,000/-; that he had received further treatment at Ahmedabad and remained hospitalised from 04.07.1992 to 31.08.1993; that he has suffered permanent disablement of his leg; that he has alleged having spent Rs.1,00,000/- on treatment; that though he has produced the bills of Rs.50,000/- but looking to the period of treatment and repeated hospitalisation and the attendance by his family members, he may be awarded compensation in the sum of Rs.1,00,000/-. The learned Judge has further observed that the claimant was a police employee and because of the handicap he has lost the chances of promotion and such was a traumatic condition for a police employee and, therefore, on this count it was proper to award compensation in the sum of Rs.1,00,000/-. In issue No.4 it has been observed that the amount of Rs.25,000/- and Rs.12,000/- already received by the claimant was required to be deducted from this amount of Rs.2,00,000/- and the non-applicants Nos. 1 and 5 remain liable for

compensation.

The Tribunal has thereafter proceeded to make the award with the directions that the claimant would be entitled to recover compensation of Rs.2,00,000/- from the non-applicants Nos. 1 and 5 jointly and severally; that the amount would be paid by the non-applicants within two months; that on the amount of Rs.1,00,000/- the claimant would be entitled to interest @ 12% per annum till the date of decision and upon non-payment of the amount within two months, the claimant would be entitled for interest on the entire amount of Rs.2,00,000/- @ 12% per annum. The observations as made in issue No.4 and so also in the conclusion could be noticed as under:-

> "विवाद्यक सं0 4 :
>
> 14. प्रार्थी प्रतिकर के रूप में कुल रू0 2,00,000/- प्राप्त करने का अधिकारी है । इसमें वह राशि मुजरा दी जानी चाहिये जो वह अब तक प्राप्त चुका है जो राशियां रू0 25,000/- एवं रू0 12,000/- है । चूंकि मोहनलाल अप्रार्थी सं0 5 अपने राजकीय कर्तव्य के निष्पादन के दौरान वाहन चला रहा था और वह राजस्थान राज्य का कर्मचारी था अत: अप्रार्थी सं0 1 व 5 की उपरोक्त राशि की अदायगी की जिम्मेदारी मानी जाती है और अप्रार्थी सं0 2,3 व 4 को अनावश्यक पक्षकार माना जाता है ।

::: आदेश :::

15. यह क्लेम आवेदन प्रार्थी के पक्ष में एवं अप्रार्थी सं0 1 एवं 5 के विरूद्ध संयुक्त एवं पृथक पृथक रूप से रू0 2,00,000/- प्रतिकर की अदायगी के लिये आदेशित किया जाता है । अप्रार्थीगण दो माह में यह राशि अदा करेंगे । प्रार्थी तारीख क्लेम आवेदन दिनांक 06.11.93 से ता अदायगी रू0 1,00,000/- पर 12 प्रतिशत वार्षिक की दर से निर्णय की दिनांक तक ब्याज भी प्राप्त करने का अधिकारी होगा । इसी प्रकार यह भी आदेश दिया जाता है कि आज की तिथि से दो माह समाप्त होने की तिथि तक यह राशि अदा नहीं की जाती है तो प्रार्थी कुल रू0 2,00,000/- पर दो माह के पश्चात 12 प्रतिशत वार्षिक की दर से ब्याज भी प्राप्त करने का अधिकारी होगा । एवार्ड उक्त वर्णितानुसार तत्काल जारी हो !"

Assailing the award aforesaid, learned Additional Government Advocate has strenuously contended that the award on its quantification of compensation remains highly excessive; that the Tribunal has erred in allowing exorbitant amount towards treatment expenditure and so also towards non-pecuniary loss; that the claimant has failed to establish any loss of future earnings; and he had already joined his duties after recovering from the illness and there had not been any reduction in his pay; and that he was even otherwise not eligible for further promotion. Learned Additional Government Advocate submitted that the Tribunal has erred in making the award in the exorbitant sum of Rs.2,00,000/- in place of awarding reasonable amount on the relevant heads and even

not deducting the amount already paid under No Fault Liability and so also from the Welfare Fund.

Learned counsel for the claimant on the other hand has opposed with the submissions that the award on its quantification of compensation remains rather on the lower side and in view of the long drawn treatment and agony suffered by the claimant, the ultimate award made by the Tribunal cannot be said to be so excessive as to warrant interference in appeal. Learned counsel also submitted that the claimant has clearly deposed that his co-employees have already been promoted and that he has lost his chances of promotion because of disablement which has resulted due to the injuries sustained in the accident; that there has been no rebuttal of the evidence lead by the claimant nor he has been cross-examined on such assertion of loss of future earnings and, therefore, the amount of compensation awarded by the Tribunal calls for no interference. Learned counsel has relied upon the decisions in Ashwani Kumar Mishra V. P. Muniam Babu & Ors. : 1999 ACJ 1105 and the R.D. Hattangadi V. Pest Control (India) Pvt. Ltd. & Ors. : 1995 ACJ 366.

Having given a thoughtful consideration to the rival submissions and having scanned through the entire record, this Court is clearly of opinion that the award made by the Tribunal in the present case cannot be said to be that of just and

reasonable compensation and the figure of compensation has been arrived at by the Tribunal without application of relevant principles and without even consideration of the record. The award in question cannot be sustained and deserves modification by downward revision.

Having examined the record and then the impugned award, this Court is constrained to observe that the manner of making of the award in the present case cannot be appreciated. The learned Judge of the Tribunal has cursorily observed that the claimant has produced bills Ex.12 to 19 in the sum of Rs.50,000/-. However, the bills and receipts in relation to the treatment expenditure are Ex. 12 to Ex. 18 and their sum total comes to Rs.30,225.92. The learned Judge has allowed Rs.1,00,000/- towards loss of earnings without specifying the income of the claimant and the loss of income suffered by him; and the figure of Rs.1,00,000/- has been picked up without application of any principle. To cap it all, the learned Judge while making observations in issue No.4 has found the amount of Rs.25,000/- (received under No Fault Liability) and the amount of Rs.12,000/- (allegedly received from Welfare Fund) liable to be deducted from the amount of Rs.2,00,000/- but even this deduction has not been incorporated in the final award. Then, so far the amount of Rs.12,000/- is concerned, it is rather strange to notice that the learned Judge has referred to

so-called evidence of both the parties to find this amount of Rs.12,000/- having been received by the claimant. No evidence at all was led by the non-applicants in this case. Moreover, there is no specific evidence available on record for which it could be concluded that the claimant has received such amount of Rs.12,000/- which was required to be deducted in the award of compensation. Then, there appears no logic or reasoning for allowing interest only on the amount of Rs.1,00,000/- @ 12% per annum from the date of filing of the claim application and allowing interest @ 12% per annum on the entire amount of Rs.2,00,000/- if not paid within two months. To say the least and it is rather painful to say so, the impugned award is nothing but a jumble of perversity and contradictions. The entire award appears to have been made in a wholly cursory manner de hors the record, without looking at the requirements of law and without application of the relevant principles; and cannot sustain itself. In a vehicular accident claim case, the amount of compensation is required to be assessed on some rationale and on some basic principles like those explained by the Hon'ble Supreme Court in R.D. Hattangadi's case (supra) thus:

> "Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and

> which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

Learned counsel for the claimant-respondent has referred to the decision in R.D.Hattangadi and so also in Ashwani Kumar Mishra's case (supra) to support the award of compensation made in favour of the claimant; however, on facts, both the cases aforesaid dealing with the claims for compensation in relation to the victims who had suffered paraplegia and became permanently invalid cannot be applied for quantification of compensation in the present case. Of course, the broad principles explained by the Apex Court in R.D. Hattangadi's case need to be applied with reference to the facts of each individual case.

Having regard to the circumstances of the case, this Court is of opinion that the amount of just compensation payable to the claimant could be assessed thus: The claimant has produced the bills of expenditure of Rs. 30,225.92 in relation to his private treatment and having regard to the circumstances of the case and the period of treatment, i.e. of the year 1992-93, and making provision for some extra expenditure, the claimant could be allowed a sum of Rs. 35,000/- towards treatment expenditure. The claimant could further be allowed Rs.9,000/- as claimed by him towards special diets. In the circumstances of the case particularly when the claimant has shown having taken treatment at different places and the nature of injury suffered, a further sum of Rs.10,000/- could be allowed towards the attendants and so also transportation charges. The claimant suffered the injury in the night intervening 3rd - 4th July 1992 and joined his duties on 01.09.1993. At the relevant time he was getting salary of Rs.1,200/- per month and it appears appropriate to allow loss of income for the entire period of 14 months spent by him under treatment. The claimant is, therefore, entitled for pecuniary loss at Rs.16,800/-. So far the future earnings are concerned, it is true that the claimant has stated in his claim application of having lost chances of his promotion and has alleged that he would have got salary at Rs.4,000/- per month by the end of his

service tenure after getting promotions and such assertion has not been put to any specific rebuttal in the reply submissions and the non-applicants have not led any evidence despite the claimant stated in his deposition that his colleagues have already got promotion; but then, the fact remains that the claimant has failed to establish as to on which post he was likely to be promoted and if he was carrying eligibility and qualification for such promotion or not. Quantum of compensation with reference to future loss of income has also not been stated in the claim application with specific particulars about such loss of income and with reference to proper multiplier to be applied. In the face of uncertain nature of the case set up by the claimant it does not appear reasonable to award any compensation towards loss of future earning. The claimant has otherwise not lost on his emoluments as earned prior to the accident. However, the claimant has produced on record his disability certificate (Ex.19) showing deformity of knee and ankle joint of right lower extremity. With the nature of disablement suffered by the claimant in the age of 35 years it appears appropriate to allow compensation towards loss of amenities of life in the sum of Rs.50,000/-. Another sum of Rs.10,000/- deserves to be allowed towards pains and sufferings for two grievous injuries. In the manner aforesaid, the claimant is entitled for total compensation in the sum of

Rs.1,30,800/- (35,000/- + 9,000/- + 10,000/- + 16,800/- + 5,000/- + 10,000/-) as against the amount of Rs. 2,00,000/- awarded by the Tribunal.

The claimant has of course been allowed Rs.25,000/- towards No Fault Liability on 18.01.1996 by the Tribunal and such amount deserves to be deducted from the aforesaid amount of compensation found payable. The claimant is, therefore, entitled for remaining amount of Rs.1,05,800/- (1,30,800/- - 25,000/-).

So far the rate of interest is concerned, the record of the claim case shows that the claim application was filed in the year 1993 and was decided only in the year 2000. The record further shows that the claimant after examining PW-3 Lal Shanker on 10.03.1998 continued with the proceedings for over two years for the purpose of getting other witnesses summoned and despite opportunities granted by the Tribunal neither any other witness was produced nor even the concerned doctor was got summoned and then the claimant closed his evidence on 02.05.2000. In the overall circumstances of the case, with reference to the period of incident, the time elapsed in trial of the claim case and the reduction being made herein, in the balance of equities it is considered appropriate that the claimant be allowed interest @

9% per annum from the date of filing of the claim application over the award amount of Rs.1,05,800/-.

Accordingly, this appeal succeeds and is partly allowed; the award made by the Tribunal is modified and the claimant is held entitled for total compensation in the sum of Rs.1,30,800/- and after deducting the amount of Rs.25,000/- received under No Fault Liability, the claimant is held entitled to receive a sum of Rs.1,05,800/- together with interest @ 9% per annum from the date of filing of the claim application. The amount payable under this modified award shall be deposited by the appellant within 30 days from today with the Tribunal. Upon deposit, 50% of the amount be paid cash to the claimant and the remaining be placed in a Monthly Income Scheme of Post Office for a minimum period of 6 years and the claimant shall be entitled to receive periodical interest thereupon.

In the circumstances of the case, the parties are left to bear their own costs.

(DINESH MAHESHWARI), J.

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